IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Review Applications No.68 and 69 of 2007

Review Application No.68 of 2007:
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1. The Chairman
Tamilnadu Housing Board
No.331
Anna Salai
Nandanam
Chennai 35.

2. The Executive Engineer and Administrative Officer
Coimbatore Housing Unit
TNHB
Coimbatore 12. ..Petitioners

Vs.

1. P.Karuppa Konar

2. Marikkal

3. M.Nallavaratha Konar

4. N.Nallavaradha Konar

5. Karuppathal

6. R.Rangasamy Konar

7. R.Shanmugam

8. M.Nanjakonar

9. V.M.Nanjappan
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10. M.Krishnan

11. Palaniammal

12. N.Natarajan

13. M.Karuppakonar

14. N.Palanisamy

15. Krishnakonar

16. The Government of Tamilnadu
rep.by the Secretary
Housing and Urban Development Department
Fort St.George
Chennai 9.

17. The Special Tahsildar (LA)
Housing Scheme II
Coimbatore 18
Tamilnadu State.

18. Ponnusami

19. M.Kali Krishnan

20. V.N.Ramasamy

21. K.Kalimuthu

22. R.Dhanalakshmi

23. K.Sekar ..Respondents

(Respondents 18 to 23 are impleaded
as party respondents as per order of
the Court dated 27.6.2007, made
in M.P. Nos.1 of 2007 to 6 of 2007)

Review Application No.69 of 2007:
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The Tamilnadu Housing Board
rep.by the Executive Engineer and Administrative Officer
Coimbatore Housing Unit
Coimbatore 12. ..Petitioner

Vs.
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1. Krishnammal

2. Palaniappan

3. Natarajan

4. M.Ramasamy

5. M.Natarajan

6. Saraswathy

7. Palaniamma

8. Kaliappan

9. Rajan

10. State of Tamilnadu,
rep.by the Commissioner and Seecretary to Govt.
Housing and Urban Development Department
Fort St.George
Madras 9.

11. The Special Tahsildar (L.A.) and Acquisition Officer
Housing Scheme III
Coimbatore 18.

12. N.Palaniappan

13. N.Natarajan ..Respondents

(Respondents 12 and 13 are impleaded
as party-respondents as per order of
the Court dated 27.6.2007 made in
Miscellaneous Petition No.1 of 2007)

Review Applications filed under Order 47 Rule (1) and Section 114 of the Code of Civil Procedure, praying to review the common order passed by this Court respectively in W.A.No.258 of 1994 in W.P.No.4079 of 1989 and W.A.No.1069 of 1994 against W.P.No.14235 of 1988.

For petitioners }
in both the } : Mr.P.S.Raman, AAG for K.Chelladurai
Applications }

For R.16 & R.17 in }
Rev.A.68/2007 }
and } : Mr.K.Balakrishnan, AGP
R.10 & R.11 in }
Rev.A.69/2007 }

For R.7,9,14 in }
Rev.A.68/2007 }
and } : Mr.R.Thiagarajan, S.C. for Mr.V.Gangadharan
R.2 to R.7 in }
Rev.A.69/2007 }

For R.12 }
in } : Mr.B.Rajendran
Rev.A.68/2007 }

COMMON ORDER

ELIPE DHARMA RAO, J.

The Government of Tamil Nadu, on the request of the petitioners, issued a notification under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.799 Housing and Urban Development, dated 13.8.1982 to acquire lands in an extent of 183.35 acres in Telngupalayam village for the purpose of construction of houses under Anna Nagar Neighbourhood Scheme. Aggrieved, W.P.Nos.4079 of 1989 and 14235 of 1988 were filed by the respondents 1 to 15 and 1 to 9 respectively in these review applications. Though initially interim stay was granted, the same was vacated by a learned single Judge on 20.2.1994. Aggrieved, the respondents 1 to 15 and 1 to 9 in these review applications have filed W.A.Nos.258 and 1069 of 1994 and the First Bench of this Court, while taking-up the said writ appeals along with the writ petitions, has allowed the writ petitions. The said decision of the First Bench of this Court was challenged before the Honourable Supreme Court by the petitioners herein in SLP (Civil) Nos.13458 to 13462 of 1998 and since the learned counsel for the petitioners stated that they wanted to move the High Court for review of the judgment under appeal, the said SLPs. were dismissed by the Honourable Supreme Court on 31.8.1998, consequent to which these Review Applications are filed by the petitioners.

2. Admittedly, the review petitioner is the requisitioning body. It has been argued by the learned counsel appearing on behalf of the respondents that the review applications filed by the Requisitioning Body are not maintainable. In support of their arguments, the learned counsel for the respondents have relied on a judgment of the Honourable Apex Court in THE MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD vs. CHANDULAL SHAMALDAS PATEL AND OTHERS [1971 (3) SCC 821]. In the above said judgment, the lands were notified for acquisition for the use of the Municipal Corporation and when the said notification was quashed by the Court, the Municipal Corporation, which was impleaded as fourth respondent before the High Court, has appealed to the Supreme Court and the Honourable Apex Court has held that since the Municipalality is a non-aggrieved party, it is not entitled to file the appeal.

3. The learned counsel for the respondents have also relied on a judgment of the Division Bench of this Court in TAMIL NADU HOUSING BOARD vs. SEMBANNA GOUNDER AND OTHERS [2006 (4) CTC 803]. In this judgment, it has been held:

"Appropriate Government alone can proceed to initiate proceedings for acquiring lands exercising their power of Eminent Domain. Housing Board being requisition body has no interest, whatsoever, at any stage of proceedings initiated under Land Acquisition Act, in the land intended to be acquired till such time possession of acquired land is handed over to Housing Board. It is only Government and Government alone can challenge order quashing declaration under Section 6. Writ Appeal preferred by Housing Board is held to be not maintainable."

4. But, in HIMALAY TILES AND MARBLE (P) LTD. vs. F.V.COUTINHO [AIR 1980 SC 1118], the Honourable Apex Court has held that the beneficiary viz. the requisitioning body would come within the definition of "person interested" as defined in Section 3(b) of the Land Acquisition Act. It has also been held that the expression "Person interested" is very comprehensive and it does not profess to give an exhaustive definition and a liberal interpretation has to be given to the said expression. In fact, while upholding the right of requisitioning body to file an appeal, in para No.13 of the said judment, the Honourable Apex Court has held as follows:
"Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a Court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a Court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land."

5. Further, in U.P.AWAS EVAM VIKAS PARISHAD vs. GYAN DEVI [(1995) 2 SCC 326], their Lordships of the Constitution Bench of the Honourable Apex Court, while dealing with the question of maintainability of an appeal by the requisition body has taken note of the specific provisions of Section 3(b) of the Land Acquisition Act, which defines 'Person interested' and as well the enabling provision viz. Section 50(2), which provides that the requisition body may appear and adduce evidence for the purpose of determining the amount of compensation and upheld the right of appeal by the requisitioning body.

6. In M/s.NEYVELY LIGNITE CORPN.LTD. vs. SPECIAL TAHSILDAR (LAND ACQUISITION), NEYVELY AND OTHERS (AIR 1995 SC 1004), their Lordships of the Three Judge Bench of the Honourable Apex Court have held:

"The beneficiary i.e. local authority or company, a co-op.society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. The beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvas its correctness by filing an appeal or defend the award of the Collector...."

7. Following the above said judgment of the Honourable Apex Court, a Division Bench of this Court in THE EXECUTIVE ENGINEER AND ADMINISTRATIVE OFFICER, TNHB vs. S.GOVINDARAJ AND ANOTHER (2004 (1) CTC 48), has held that 'liberal interpretation has to be given to term "person interested" as found in Section 3(b) of Land Acquisition Act. Requisitioning Body, on whose behalf land acquisition was initiated for the purpose of widening road is definitely aggrieved person and requisitioning body has to be treated as person aggrieved and thus the appeal filed by Requisitioning Body maintainable.'

8. In view of the subsequent judgments of the Honourable Apex Court, extracted supra, holding that the requisitioning body is a 'party interested'' and hence could challenge the orders of the Court setting aside the land acquisition proceedings, the judgment of the Honourable Apex Court relied on by the learned counsel for the respondents in 1971 (3) SCC 821 supra, with respect, must be held to be no longer a good law and hence the same cannot be applied to the facts of the case.

9. Likewise, in the judgment cited by the learned counsel appearing for the respondents reported in 2006 (4) CTC 803, the Division Bench of this Court has not considered the above judgments rendered by the Honourable Apex Court wherein it was categorically and emphatically held by the Honourable Apex Court that the requisition body is an 'interested party' and thus is a person aggrieved, who could challenge the orders of the Court setting aside the land acquisition proceedings. Further more, in the above said judgment of the Division Bench of this Court, possession was not handed over to the Housing Board and no Award was also passed. But, in the case on hand the Award was passed as early as on 23.9.1986 and possession was taken by the Land Acquisition Officer and handed over to the requisitioning body on 21.11.1988, besides depositing a sum of Rs.1,72,875.20 as compensation before the Civil Court under Section 30 of the Land Acquisition Act. Therefore, the judgment of the Division Bench relied on by the learned counsel for the respondents, besides seems to be not a good law, in view of the above said judgments of the Honourable Apex Court deciding the entire issue, can very well be distinguished and cannot be applied to the facts of the case on hand.

10. In view of our above discussion and the the above said settled legal position of law by the Honourable Apex Court that the requisitioning body is an interested party to the proceedings and in view of the undisputed fact that the petitioner is the requisitioning body, we are unable to accept the contention raised by the learned counsel for the respondents that these review applications filed by the requisitioning body is not maintainable. At this juncture, the learned senior counsel for the respondents has submitted that if at all, as per the judgments of the Honourable Apex Court, the requisitioning body should have filed only an appeal but not the review applications. This is nothing but reading between the lines of the judgments of the Honourable Apex Court, since it is common knowledge of anybody that Review is only a continuation of the earlier proceedings. Therefore, it cannot be said that the petitioners are not entitled to file these review applications. Thus settling this issue, now we shall proceed to decide the other points urged by both the parties.

11. The challenge posed by the land owners in the writ petitions to the acquisition proceedings is that there was no publication in the locality either for the notification under Section 4 of the Act or of the Declaration under Section 6 of the Act or any notice was ever served with respect to the pronouncement of the Award. At this juncture, it is to be pointed out that Section 4(1) notification which was sought to be quashed in the writ petitions was dated 13.8.1982, but the writ petitions were filed in the years 1988 and 1989 i.e. after a period of 6-7 years. As could be seen from the counter filed by the review petitioners in the writ petition, Section 4(1) notification was issued on 13.8.1982 and the same was published in the gazette on 25.8.1982 and after completing the formalities, Section 5-A enquiry was conducted on 8.11.1982 and 9.11.1982 wherein the land owners raised the objections for the acquisitions, which were communicated to the requisitioning body and the remarks on the objections from the requisitioning body were communicated to the land owners. After considering the recommendations of the Land Acquisition Officer and the objections raised by the land owners, the Government have issued Section 6 declaration in G.O.Ms.No.1426, dated 20.9.1983 and after notice to the land owners, the Award enquiry was conducted on 20.8.1986, 3.9.1986 and 11.9.1986 and the Award was passed in Award No.4/86 on 23.9.1986 and thereafter, the possession was taken over by the Land Acquisition Officer and was handed over to the requisitioning body on 21.11.1988. It has also been averred that the writ petitioners are not in possession of the land and that they have not attended Section 5-A enquiry and did not produce any

relevant documents to claim rights over the land.

12. Considering all these aspects and further considering the fact that the Housing Board has already invested a sum of Rs.10 lakhs in furtherance of the Scheme and other developmental activities and since the writ petitioners have disputed these facts, the learned single Judge, calling for the records, had found that the requisitioning body has taken over possession of the land and had vacated the interim stay already granted.

13. But, the First Bench of this Court, in spite of availability of voluminous material on record to show that the possession has already been handed over to the requisitioning body and a sum of Rs.10 lakhs has already been spent for the developmental activities of the acquired land by the requisitioning body, has committed a factual error in assuming that possession might have been taken symbolically by the Land Acquisition Officer and erroneously has set aside the well considered and merited order passed by the learned single Judge, compelling these petitioners to file these review applications, rightly also, since a factual error has been committed by the First Bench. In RAJENDER SINGH vs. Lt.GOVERNOR, ANDAMAN & NICOBAR ISLANDS AND OTHERS, their Lordships of the Honourable Apex Court have held that 'order passed without deciding many important issues and by ignoring material on record is amenable for review.'

14. As has already been pointed out supra, the writ petitions were filed after 6-7 years of the Section 4(1) Notification, the earliest of it viz. W.P.No.14235 of 1988 itself having been filed only on 3.11.1988 i.e. very well after the Award having been passed on 23.9.1986.

15. In STATE OF TAMIL NADU AND OTHERS ETC. vs. L.KRISHNAN AND OTHERS [AIR 1996 SC 497], their Lordships of the Three Judge Bench of the Honourable Apex Court have held:
"The High Court has held that the non-compliance with sub-rule (b) and (c) of Rule 3 of the Rules made by the Government of Tamil Nadu pursuant to Section 55(1) of the Land Acquisition Act vitiates the report made under Section 5-A and consequently the declarations made under Section 6. The said sub-rules provide that on receipt of objections under Section 5-A, the Collector shall fix a date of hearing to the objections and give notice of the same to the objector as well as to the department. It is open to the department to file a statement by way of answer to the objections filed by the land owners. The submission of the writ petitioners was that in a given case it may well happen that in the light of the objections submitted by the land-owners, the concerned department may decide to drop the acquisition. Since no such opportunity was given to the department concerned herein, it could not file its statement by way of answer to their objections. This is said to be the prejudice. We do not think it necessary to go into the merit of this submission on account of the laches on the part of the writ petitioners. As stated above, the declaration under Section 6 were made some time in the year 1978 and the writ petitioners chose to approach the Court only in the years 1982-83. Had they raised this objection at the proper time and if it were found to be true and acceptable, opportunity could have been given to the Government to comply with the said requirement. Having kept quiet for a number of years, the petitioners cannot raise this contention in writ petitions filed at a stage when the awards were about to be passed."

16. Further, in MUNICIPAL CORPORATION OF GREATER BOMBAY vs. THE INDUSTRIAL DEVELOPMENT INVESTMENT CO. PVT.LTD AND OTHERS [AIR 1997 SC 482], their Lordships of the Honourable Apex Court have held:

"Where no objection was raised by the claimants against the proposed scheme for acquisition of land and the award became final and possession was also taken, the writ petition filed thereafter challenging the acquisition of land was liable to be dismissed on the ground of laches. When there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings

have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Art.226 of the Constitution to quash the notification under S.4(1) and the declaration under S.6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not exercise its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. In such a case, it could not be said by claimants that they did not know of proposed scheme when it was duly published in newspapers by authorities as provided by Bombay Act."

17. In THE EXECUTIVE ENGINEER AND ADMINISTRATIVE OFFICER, TNHB vs. S.GOVINDARAJ AND OTHERS [2004 (1) CTC 48] (cited supra), the Division Bench of this Court, following the judgment of the Honourable Apex Court in State of Punjab VS. Sadhuram [1997 (9) SCC 544] has held that 'after taking possession of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owners should extinguish and the Government became absolute owner of the property free from all encumbrances and under the said circumstances, it is not open to the writ petitioners to challenge the acquisition proceedings after the land vest with the Government.'

18. When such is the factual and legal position that the writ petitions were filed after the Award was passed and the possession was also handed over to the Requisitioning Body, who have spent a sum of Rs.10 lakhs towards the development of the lands acquired, the right, title and interest of the erstwhile owners got extinguished since the Government and thereupon the Requisitioning Body has became the absolute owner of the property free from all encumbrances. In such circumstances, the First Bench has committed an error in holding that it is not a fit case where appropriate relief can be declined to the petitioners solely on the ground of laches. Instead, it should have dismissed the claim of the writ petitions on more than one account, as has been discussed by us supra, including on ground of laches.

19. For all the above discussions, we hold that the First Bench has committed factual and legal errors in arriving at the conclusion to allow the writ appeals and writ petitions filed by the writ petitioners and therefore, it needs to be interfered with in these review applications.

Accordingly, both these Review Applications are allowed, setting aside the common order of the First Bench dated 1.4.1998. W.P.Nos.14235 of 1988 and 4079 of 1989 shall stand dismissed. No costs.

Rao

To

1. The Secretary to the Government of Tamilnadu
Housing and Urban Development Department
Fort St.George
Chennai 9.

2. The Special Tahsildar (LA)
Housing Scheme II
Coimbatore 18

Tamilnadu State.